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FISCAL IMPACT STATEMENT

LS 6982

BILL NUMBER: HB 1250

NOTE PREPARED: Feb 2, 2006

BILL AMENDED: Feb 2, 2006

SUBJECT: Alcohol beverage matters.

FIRST AUTHOR: Rep. Messer

FIRST SPONSOR: Sen. Landske

BILL STATUS: As Passed House

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State

Summary of Legislation: (Amended) This bill requires that the provisions of the alcohol and tobacco law be strictly construed and that the words used in the law be interpreted according to their literal meanings.

This bill also defines "grocery store".

The bill allows the Alcohol and Tobacco Commission (ATC) to conduct random unannounced inspections of locations where alcoholic beverages are sold or distributed.

The bill allows a person at least 18 years of age and under 21 years of age to receive or purchase alcoholic beverages as part of an enforcement action.

It provides that the ATC has certain powers regarding enforcement of the tobacco laws. The bill makes changes to the Cigarette Fair Trade Act.

The bill requires a local alcoholic beverage board to allow an individual to make oral comments at a public meeting or hearing.

The bill requires: (1) a liquor dealer, beginning January 1, 2007, to display liquor in a clearly designated area where the presence of a minor is prohibited without a parent or guardian who is at least 21 years of age unless the liquor dealer meets certain requirements; and (2) dealer permittees to have at least one employee who holds an employee's permit and, beginning January 1, 2007, ensure that a sales clerk working on the license premises receives training. The bill also provides that the ATC may adopt rules to implement these requirements.

The bill prohibits the issuance of an alcoholic beverage employee's permit to an individual with two convictions for operating while intoxicated if: (1) the first conviction occurred less than ten years before the date of the permit application; and (2) the individual completed the sentence for the second conviction less than two years before the permit application. The bill also provides that if an individual has at least three convictions for operating while intoxicated and the individual completed the sentence for the last conviction more than ten years before the permit application, the individual may apply to the ATC for a permit, but the commission may grant or deny the application. This bill provides for the revocation of a permit upon an individual's subsequent conviction for operating while intoxicated.

The bill allows a holder of an alcoholic beverage permit to sell or offer to sell an alcoholic beverage on credit to an individual who does not hold an alcoholic beverage permit.

The bill provides that any city that owns a golf course may obtain a permit for the retail sale of alcoholic beverages.

The bill also provides that a primary source of supply or wholesaler may not provide an illuminated advertising sign to a dealer or retailer in a manner that violates the trade practice restrictions of the commission or the law.

The bill requires the ATC to issue a permit to the State Fair Commission.

It allows for three new alcoholic permits within a district in an economic development area with a unit of the National Park Service partially located within the district, and with an international deep water seaport located within the district. The bill requires the legislative body of the municipality in the district to recommend sites for the permits. It provides that the permits cost \$6,000.

The bill allows for extended time for alcohol sales on New Years Eve if New Years eve falls on a Sunday. It defines as a club an association or corporation in a consolidated city that has been in existence for 25 years, held a bingo licence for ten years, and does not allow persons under the age of 18 to be members, guests, or workers.

The bill creates the Interim Study Committee on Alcoholic Beverage Issues.

The bill also makes it a Class C infraction for a licensed premises to furnish an alcoholic beverage to a minor and increases the penalty for subsequent violations.

The bill repeals provisions that: (1) require an individual, partnership, corporation, limited partnership, or limited liability company to meet Indiana residency requirements to obtain a retailer's, dealer's or wholesaler's permit; (2) prohibit the issuance of a retailer's, dealer's, or wholesaler's permit to a partnership unless each member of the partnership possesses the same qualifications required of an individual permit applicant; and (3) exempt certain entities from the Indiana residency requirement.

Effective Date: July 1, 2006.

Explanation of State Expenditures: This bill could increase enforcement and administrative costs to the Alcohol and Tobacco Commission (ATC). The ATC would be forced to amend forms, and enforce the provisions of the bill related to sales clerk permits. It is anticipated that the increase in costs could be offset by the fee revenue that would be collected by requiring all sales clerks at grocery stores and drug stores to

obtain employee permits.

The bill also requires the ATC to conduct random unannounced inspections at locations where alcoholic beverages are sold or distributed to ensure compliance with the law. This provision will increase the administrative costs of the ATC, but ultimately the amount of the increase will be determined by the number of inspections the ATC chooses to conduct.

Explanation of State Revenues:

Strict Construction of IC 7.1: The bill adds language to IC 7.1 that provides that this title and the rules adopted under this title shall be strictly construed, and the words used in this title and the rules shall be interpreted according to their literal meanings. The bill also provides that provisions of this title shall be construed to further limit rather than expand commerce in alcoholic beverages.

It is anticipated that these changes are meant to prohibit the shipment of wine directly to Indiana residents by Indiana wineries. Current law prohibits out-of-state wineries from shipping directly to Indiana residents.

Sales Clerks: The bill requires an establishment that has a beer, wine or liquor dealer permit to have at least one employee who has an employee permit from the ATC in order to ring up sales of alcohol. Beginning January 1, 2007, all other sales clerks must receive training approved the ATC and provided by an individual who has an employee permit. This provision of the bill could affect employee permit fee revenue to the Excise Police Retirement Fund and the ATC's Enforcement and Administration Fund.

Alcohol Sales in Designated Areas: The bill requires a beer, liquor, or wine dealer (other than a package liquor store) to sell alcoholic beverages in a designated area separated from the sale of nonalcoholic retail merchandise on the dealer's licensed premises. The bill prohibits a minor from entering a designated area without a parent or guardian who is at least 21 years of age. The permittee is not required to have a designated area if the permittee:

- (1) displays liquor in an area that is less than 25 linear feet; and
- (2) uses at least 1 of the following security measures:
 - (A) The liquor is displayed behind the retail counter.
 - (B) Each bottle of liquor has a security cap.
 - (C) The liquor is displayed adjacent to the pharmacy counter.

Penalty Provision: If a person violates any of the provisions in this bill the person commits a Class B misdemeanor. If additional court cases occur and fines are collected, revenue to both the Common School Fund (from fines) and the state General Fund (from court fees) would increase. The maximum fine for a Class B misdemeanor is \$1,000. However, any additional revenue would likely be small.

Sales of Alcohol on New Year's Eve Day: The bill allows the supplemental retailer to sell alcohol on Sunday, December 31, from 10:00 a.m. to 3:00 a.m. the following day. This would only affect sales of alcohol in years where December 31 is a Sunday. The provision of the bill is not estimated to have a significant fiscal impact.

City Owned Golf Course: The bill allows a city owned golf course to sell alcohol if the golf course obtains all the necessary permits. Under current law this was only allowed for golf courses owned by the cities of Anderson and Mishawaka

Brewers' Permit Changes: The bill prohibits a brewer from delivering beer directly to a consumer unless the brewer manufactures more than 20,000 barrels of beer in a calendar year and holds a retailer permit. Under current law a brewer could sell and deliver beer directly to a consumer at either the consumer's residence or the brewery if the quantity was ½ barrel or less.

The bill also requires that if a brewers' permit is going to be issued to any entity, other than an individual, the entity must be domiciled in Indiana or admitted to do business in Indiana.

Permit Issuance Residency Requirements: This bill repeals provisions that: (1) require an individual, partnership, corporation, limited partnership, or limited liability company to meet Indiana residency requirements to obtain a retailer's, dealer's or wholesaler's permit; and (2) prohibit the issuance of a retailer's, dealer's, or wholesaler's permit to a partnership unless each member of the partnership possesses the same qualifications required of an individual permit applicant. These changes in the permit requirements above could lead to a greater number of applicants for permits from nonresidents.

Permits Outside the Quota in Portage: The bill allows the ATC, after June 30, 2006, to issue not more than 3 new three-way, two-way, or one-way permits to a restaurant in a district not more than 500 feet from a district meeting the following requirements:

- (1) The district is within an economic development area, an area needing redevelopment, or a redevelopment district as established under IC 36-7-14.
- (2) A unit of the National Park Service is partially located within the district.
- (3) A international deep water seaport is located within the district.

The only area known to meet these criteria is in Portage, Indiana. The municipal legislative body is required to recommend the sites eligible for permits, but the ATC is not required to follow this recommendation. An applicant is not eligible for a permit under this provision if the applicant, within the 2 years before June 30, 2006, sold a retailers' permit that was for an eligible premises. The initial cost of a permit under this provision is \$6,000. Therefore the maximum increase in fee revenue in a fiscal year is approximately \$18,000.

State Fair Commission Permit: The bill requires the ATC to issue a retailer permit to the State Fair Commission. This would allow sales of alcohol on the State Fair Grounds at anytime allowed under current law. It would still be unlawful to sell alcohol during the State Fair.

Employee Permits: This bill would prohibit the issuance of an employee permit to any applicant who has 2 unrelated convictions for operating while intoxicated (OWI) if:

- (1) the first conviction is less than 10 years old; and
- (2) the sentence for the second conviction was completed less than 2 years before the application.

The bill allows the ATC to issue an employee's permit to a person with 3 unrelated convictions for OWI if the most recent conviction is at least 10 years old.

Club Permit: This bill allows a club permit to be issued to an association or corporation in a consolidated city that has been in existence for 25 years, held a bingo licence for ten years, and does not allow persons under the age of 18 to be members, guests, or workers.

Definition of Grocery Store: This bill defines the term "grocery store". While the Indiana Code currently does not define "grocery store" for alcoholic beverage purposes, it does contain provisions that make grocery stores specifically eligible to obtain a beer or wine dealer's permit. Based on information from the ATC, it is estimated that approximately 1,250 retailers in Indiana sell beer and wine under the authority of an ATC-issued grocery

store permit.

Cigarette Fair Trade Act and Tobacco Enforcement Changes: This bill inserts tobacco in the current statutory framework for ATC confiscation of alcoholic beverages. These changes more clearly define the rights of the ATC in dealing with violations by tobacco certificate holders. The bill also allows the ATC to impose civil penalties for violations of the laws concerning sale of tobacco products. Any penalties collected under this provision would be deposited in the Youth Tobacco Education and Enforcement Fund under IC 7.1-3-18.5. The bill also requires that a tobacco certificate holder consent at issuance of the certificate to inspections by the ATC at anytime during the term of the certificate.

Interim Study Committee on Alcoholic Beverage Issues: This bill establishes the Interim Study Committee on Alcoholic Beverage Issues to study the alcoholic beverage statutes in IC 7.1 and make recommendations to the Legislative Council concerning needed revisions. The bill provides that this committee shall operate under the rules of the Legislative Council.

The size and composition of the Committee are not specified in the bill. Legislative Council resolutions in the past have established budgets for interim study committees in the amount of \$9,500 per interim for committees with fewer than 16 members and \$16,500 per interim for committees with 16 members or more.

The Legislative Council provides for per diem, mileage, and travel expense reimbursement for members of interim study committees. Interim study committees are staffed by the Legislative Services Agency. The funds necessary to carry out the bill are paid from state General Fund appropriations to the Legislative Council and Legislative Services Agency.

(Revised) Penalty for Furnishing Alcohol to a Person Under 21: The bill requires that if a licensed premises furnishes alcohol to a person under 21, the premises commits a Class C infraction. The maximum judgment for a Class C infraction is \$500, which would be deposited in the state General Fund. However, any additional revenue is likely to be small.

The bill also requires that a civil penalty be imposed as follows:

- (1) If the licensed premises at that specific business location has not been issued a citation or summons for a violation of this section in the previous 90 days, a civil penalty of \$50.
- (2) If the licensed premises at that specific business location has had 1 citation or summons issued for a violation of this section in the previous 90 days, a civil penalty of \$100.
- (3) If the licensed premises at that specific business location has had 2 citations or summonses issued for a violation of this section in the previous 90 days, a civil penalty of \$250.
- (4) If the licensed premises at that specific business location has had 3 or more citations or summonses issued for a violation of this section in the previous 90 days, a civil penalty of \$500.

Background: To the extent that any of the provisions of this bill affect alcoholic beverage sales, state revenues will be impacted. Sales changes will affect collections of both alcoholic beverage excise taxes and the Sales Tax. The alcoholic beverage excise taxes are distributed in varying amounts to the following funds: state General Fund, the Post War Construction Fund, the ATC Enforcement and Administration Fund, the Addiction Services Fund, and the Wine Grape Market Development Fund. The state retains 50% of the General Fund distribution of beer and wine excise tax revenue. The remainder is distributed to cities and towns based on population. Sales Tax revenue is deposited in the: Property Tax Replacement Fund (50%), the state General Fund (49.192%), the Public Mass Transportation Fund (0.635%), the Commuter Rail Service Fund

(0.14%), and the Industrial Rail Service Fund (0.033%).

Explanation of Local Expenditures: *Penalty Provision:* A Class B misdemeanor is punishable by up to 180 days in jail.

Explanation of Local Revenues: *Penalty Provision:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from court fees. However, any change in revenue would likely be small.

State Agencies Affected: Alcohol and Tobacco Commission; Legislative Services Agency.

Local Agencies Affected: Trial courts, local law enforcement agencies, local alcoholic beverage boards. Trial courts, local law enforcement agencies.

Information Sources: ATC's *Statewide Licence Count*, August 9, 2005.

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